

EXHIBIT B

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 15 2014

R. Alessandro

Attorneys for Defendant
THE PRUDENTIAL INSURANCE COMPANY OF
AMERICA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE**

MELISSA LABAYOG, an individual,

Plaintiff,

vs.

PRUDENTIAL INSURANCE COMPANY
OF AMERICA; and DOES 1 through 50
inclusive,

Defendant.

Case No. RIC 1402362

**DEFENDANT THE PRUDENTIAL
INSURANCE COMPANY OF
AMERICA'S ANSWER TO
PLAINTIFF'S UNVERIFIED
COMPLAINT**

Complaint Filed: March 11, 2014

COMES NOW defendant THE PRUDENTIAL INSURANCE COMPANY OF AMERICA
("Prudential"), for itself and for no other party, and in response to the Complaint filed by plaintiff
MELISSA LABAYOG ("Plaintiff"), admits, denies, and/or alleges as follows:

GENERAL DENIAL

1. Pursuant to California Code of Civil Procedure ("CCP") § 431.30(d), Prudential
denies, generally and specifically, each and every allegation set forth in Plaintiff's unverified
Complaint, and each allegation of every cause of action set forth therein, and the whole thereof, and
denies that Plaintiff sustained or will sustain damages in the sum or sums alleged in her Complaint,
or in any sum or sums, or at all.

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AFFIRMATIVE AND OTHER DEFENSES

As separate and distinct defenses to Plaintiff's Complaint, Prudential alleges and avers as follows:

FIRST DEFENSE

1. Prudential alleges that the Complaint and each purported cause of action therein, fails to state facts sufficient to constitute a cause of action against Prudential.

SECOND DEFENSE

2. Prudential alleges that Plaintiff's cause of action for breach of the duty of good faith and fair dealing fails on the grounds that any and all actions taken by Prudential were fair, reasonable, and in good faith, and therefore subject to a bona fide dispute, and a genuine issue of liability exists.

THIRD DEFENSE

3. Prudential alleges that Plaintiff's cause of action for breach of contract is barred, in whole or in part, in that Prudential substantially and/or fully performed all of its duties and obligations, if any, arising out of any contract(s) with Plaintiff.

FOURTH DEFENSE

4. Prudential alleges that Plaintiff has failed to meet the terms and conditions necessary for coverage to exist under the applicable insurance policy.

FIFTH DEFENSE

5. Prudential alleges that Plaintiff failed to comply with one or more conditions precedent to obtaining coverage under the applicable insurance policy and/or benefits pursuant to the applicable insurance policy.

SIXTH DEFENSE

6. Prudential alleges that its purported obligations, if any, as alleged in the Complaint were fully performed.

SEVENTH DEFENSE

7. Prudential alleges that if Prudential failed to perform any obligations owing to Plaintiff, which Prudential categorically denies, such performance was prevented or made

impossible as a result of the acts or omissions of Plaintiff and/or others.

EIGHTH DEFENSE

8. Prudential alleges that the Complaint, and each purported cause of action alleged therein, fails to state any facts that would entitle Plaintiff to recover general, compensatory, emotional distress, statutory penalties, punitive, and/or other damages (including attorney's fees and costs) against Prudential.

NINTH DEFENSE

9. Prudential alleges, without conceding that Plaintiff sustained any damages as alleged in the Complaint, that if any such damages were sustained by Plaintiff, Plaintiff failed to and did not exercise ordinary care, caution and/or prudence on her own behalf and that the alleged damages, if any, either sustained by Plaintiff or referred to in the Complaint were directly and proximately caused and contributed to by the acts and/or omissions of Plaintiff. Accordingly, recovery, if any, on the part of Plaintiff against Prudential must be reduced by a proportionate percentage of the wrong attributable to Plaintiff.

TENTH DEFENSE

10. Prudential alleges, without conceding that Plaintiff sustained any damages as alleged in the Complaint, that if any such damages were sustained by Plaintiff, they were caused and/or contributed to by the actions and/or negligence of Plaintiff and/or her agents or representatives and/or by persons or entities other than Prudential, and the award of damages, if any, should be reduced by the proportionate percentage of the wrong attributable to those persons or entities and/or Plaintiff and/or her agents or representatives.

ELEVENTH DEFENSE

11. Prudential alleges, without conceding that Plaintiff sustained any damages as alleged in the Complaint, that if any such damages were sustained by Plaintiff, those damages should be properly apportioned among all persons or entities who contributed to those damages in proportion to the fault of those persons or entities, pursuant to California Civil Code § 1431.2 and any relevant provisions of California common and statutory law.

TWELFTH DEFENSE

12. Prudential alleges that Plaintiff's remedy for any alleged breach of contract is limited by California Civil Code §§ 3300 and 3302.

THIRTEENTH DEFENSE

13. Prudential alleges that Plaintiff's damages claim, if any, is limited by the provisions of California Insurance Code § 10111.

FOURTEENTH DEFENSE

14. Prudential alleges that the Complaint, and each purported cause of action contained therein, fails to state facts sufficient to constitute a *prima facie* claim for punitive or exemplary damages within the meaning of California Civil Code §§ 3294 and 3295, and the imposition of punitive or exemplary damages against it would violate California Civil Code § 3294.

FIFTEENTH DEFENSE

15. Prudential alleges that the bases by which punitive damages are imposed pursuant to California statutory and common law are fatally constitutionally infirm, and that giving effect to such laws is violative of the First, Fourth, Fifth, Sixth, Eighth (except the excessive fines clause), and Fourteenth Amendments to the United States Constitution, and corresponding provisions of the California Constitution.

SIXTEENTH DEFENSE

16. Prudential alleges that the California practice of allowing the wealth of an insurance company defendant to be the primary measure for the imposition of a punitive and exemplary damage award constitutes an impermissible punishment of Prudential's status in violation of its rights to due process and equal protection of the laws under the Fifth and Fourteenth Amendments to the United States Constitution and by Article I, Section 7 of the California Constitution.

SEVENTEENTH DEFENSE

17. Prudential alleges that the Complaint is barred because Prudential did not breach any legal duty owed to Plaintiff.

EIGHTEENTH DEFENSE

18. Prudential alleges that the Complaint is barred because the alleged conduct of Prudential is excused.

NINETEENTH DEFENSE

19. Prudential alleges that any and all of the actions taken by any officer, employee, and/or agent of Prudential were good faith assertions of the rights of Prudential and were therefore privileged or justified.

TWENTIETH DEFENSE

20. Prudential alleges that if Plaintiff has sustained any damages as alleged in the Complaint, which Prudential denies, she failed to mitigate said damages.

TWENTY-FIRST DEFENSE

21. Prudential presently has insufficient knowledge or information on which to form a belief as to whether it may have additional, yet unstated defenses. Prudential reserves the right to assert additional defenses in the event discovery or further investigation indicates that asserting additional defenses would be warranted.

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PRAYER

WHEREFORE, Prudential prays for a judgment in its favor and against Plaintiff as follows:

1. An order dismissing the Complaint, with prejudice, with respect to all causes of action;
2. An order declaring that Plaintiff take nothing on her Complaint;
3. An order declaring that no benefits or damages are payable to Plaintiff under the Policy;
4. For judgment against Plaintiff and in favor of Prudential;
5. That Prudential be awarded reasonable attorneys' fees;
6. That Prudential be awarded its costs of suit; and
7. For such other and further relief as the Court may deem just and proper.

Dated: April 15, 2014

MESERVE, MUMPER & HUGHES LLP
Linda M. Lawson
Jason A. James

By: 

Jason A. James
Attorneys for Defendant
THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 800 Wilshire Boulevard, Suite 500, Los Angeles, California 90017-2611.

On April 15, 2014, I served the within document(s) described as:

**DEFENDANT THE PRUDENTIAL INSURANCE COMPANY OF AMERICA'S
ANSWER TO PLAINTIFF'S UNVERIFIED COMPLAINT**

on the interested parties in this action as stated below:

William M. Shernoff
Travis M. Corby
Samuel L. Bruchey
SHERNOFF BIDART ECHEVERRIA BENTLEY LLP
301 North Canon Drive, Suite 200
Beverly Hills, CA 90210

Facsimile No.: 310-246-0380

☒ (BY MAIL) by placing a true copy thereof in sealed envelope(s) addressed above. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 15, 2014, at Los Angeles, California.

TINA M. ABRANTE
(Type or print name)

(Signature)

* Superior Court of California, County of Riverside
* www.riverside.courts.ca.gov
* Riverside Branch
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* Receipt # 201404150130 Oper: RCRKA Date: 4/15/14
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* Case # RIC1402362 Case Type: Riverside Civil
*
* Name: LABAYOG VS PRUDENTIAL INSURANCE COMPANY
* Appearance Fee
* Payment Type: CHECK
*
*Received: \$450.00
* Fee : \$450.00
*Change: \$0.00
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